TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible]

No. [illegible]

EDWARD J. PEARCY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 8, 1904.

(19,294.)

(19,294.)

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 26, 1904.

1 In the Circuit Court of the United States for the Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant. } At Law. Petition for Writ of Error.

Now comes Edward J. Pearcy, the plaintiff herein and says:

1. That on or about the 16th day of February 1904, this court entered a judgment herein in favor of the defendant and against the plaintiff, in which judgment and proceedings, and prior thereunto in this case, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays for a writ of error from the issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, March 3rd, 1904.

JAMES C. LENNEY,
Attorney for Plaintiff.

Office & P. O. address, 149 Broadway, borough of Manhattan, New York.

2 (Endorsed:) In the circuit court of the United States for the southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Petition for writ of error. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. Filed Mar. 15, 1904.

3 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Edward J. Pearcy, plaintiff, and Nevada N. Stranahan, defendant, a manifest error hath happened, to the great damage of the said Edward J. Pearcy as is said and appears by his complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 11th day of April, 1904, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, this 14 day of March, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-eighth.

[L. S.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
E. HENRY LACOMBE,
U. S. Circuit Judge.

4 [Endorsed:] E. & A. C. 2128. The U. S. circuit court of appeals for the second circuit. Edward J. Pearcy plaintiff in error, *vs.* Nevada N. Stranahan defendant in error. Writ of error. James C. Lenney, attorney for plaintiff in error. A copy of the within paper has been this day received at this office Mar. 15 1904 Henry L. Burnett, U. S. attorney. M. U. S. circuit court southern district New York. Filed Mar. 15 1904 John A. Shields, clerk. 1.45 p'd.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify, that the following pages, numbered from 5 to 1, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Edward J. Pearcy plaintiff in error, against Nevada N. Stranahan, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this seventh day of April in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-eighth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

5 United States Circuit Court, Southern District of New York.

EDWARD J. PEARCY
against
NEVADA N. STRANAHAN.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney, within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, this 26th day of October, in the year one thousand nine hundred and three.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

JAMES C. LENNEY,
Plaintiff's Attorney.

Office and post office address, 149 Broadway, borough of Manhattan, New York city.

6 Circuit Court of the United States for the Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.
} Complaint.

And now comes the plaintiff above named and by James C. Lenney, his attorney, complains of Nevada N. Stranahan, the defendant above named, and thus complaining, alleges:

I. That at all the times hereinafter mentioned, the said defendant was and still is the duly appointed and commissioned collector of customs of the United States at the port of New York in actual and unrestricted exercise of his functions as such collector and fully vested with all the powers and authorities of his said office.

II. That on the 30th day of September 1903, the defendant being such collector as aforesaid, did, under color of his said office and through the erroneous exercise of the powers and authority in him vested for the purposes of the performance of his duties as such collector, wrongfully take and unlawfully seize forty boxes of cigars, the product of and manufactured in the isle of Pines, which said island is in the possession of and part of the United States, and brought thither direct from the said isle of Pines during the month of September

1903, by the steamer Santiago de Cuba, which said goods
7 were so wrongfully taken and unlawfully seized by the said defendant on the ground that the said goods should be refused entry into the port of New York because the said goods did not constitute a legal package within the meaning of the statutes of the United States of America regulating importations from foreign countries. That the said plaintiff was unlawfully and against his will and in spite of his formal protest duly made in writing, deprived of the possession of the said goods to which he was then, and still is, entitled, but which the defendant, enabled so to do by power and authority of his said office, had wrongfully taken and detained and still wrongfully holds and detains on the ground that the same did not constitute a legal importation from a foreign country, whereas, the said goods were not liable to duty and did not constitute an illegal or unlawful package, the said goods not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must under and by virtue of the provisions of the Constitution of the United States in that regard be admitted to free entry in any port of the United States.

III. That by reason of the said wrongful and unlawful acts of the said defendant, the plaintiff has been damaged in the sum of two hundred and fifty dollars ($250.00) which is the fair and reasonable value of the said goods.

Wherefore, this plaintiff demands judgment against the defend-
ant for the sum of two hundred and fifty dollars ($250.00) with
8 interest thereon from the 30th day of September, 1903, together with the costs of this action.

JAMES C. LENNEY,
Plaintiff's Attorney.

Office & P. O. address, 149 Broadway, borough of Manhattan, New York city.

STATE OF NEW YORK, }
County of New York, } ss.:

Edward J. Pearcy, being duly sworn, says: that he is the plaintiff in this action; that he had read the foregoing complaint and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

EDWARD J. PEARCY.

Sworn to before me this 23rd day of October, 1903.

[SEAL.]

CHAS. J. DODD,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

9 (Endorsed:) N. S. 19080. Circuit court of the United States, southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Complaint. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. Custom house, N. Y. collector's office, law division. Service of a copy of the within is admitted this 27th day of Oct. 1903. N. N. Stranahan, collector. U. S. circuit court, southern district of New York. Filed Oct. 28, 1903. John A. Shields, clerk.

10 United States Circuit Court, Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant. } Demurrer.

Nevada N. Stranahan, the defendant above named, by his attorney Henry L. Burnett, United States attorney for the southern district of New York demurs to the plaintiff's complaint herein upon the following grounds:

The plaintiff's complaint herein does not state facts sufficient to constitute a cause of action against this defendant.

Dated, New York December 10th, 1903.

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant.

Office & P. O. address, room 50, P. O. building, borough of Manhattan, New York city.

(Endorsed:) U. S. circuit court, southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Demurrer. Henry L. Burnett, United States attorney, attorney for def't. Due service of a copy of the within is hereby admitted. New York, Dec. 10th, 1903. James C. Lenney, attorney for pl'ff. To James C. Lenney, Esq., attorney for pl'ff, 149 Broadway, N. Y. city. U. S. circuit court, southern district of New York. Filed Jan. 20, 1904. John A. Shields, clerk.

11 Circuit Court of the United States for the Southern District of New York.

EDWARD PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

This cause having been regularly brought on for argument upon the complaint and the demurrer interposed thereto by the defendant, at a stated term of this court, held by me in and for the

southern district of New York, at the post office building, in the borough of Manhattan, city of New York, on the 20th day of January 1904, and the said cause having been duly argued by Arthur M. King, Esq., assistant United States attorney for the defendant in support of the demurrer, and by Charles J. Dodd, Esq., of counsel, for the plaintiff in opposition to said demurrer, and due deliberation having been had thereon, it is on motion of Henry L. Burnett, United States attorney and attorney for the defendant,

Ordered, adjudged and decreed, that the said demurrer be, and the same hereby is in all respects sustained.

It is further ordered, adjudged and decreed, that the complaint of the plaintiff be, and the same hereby is dismissed with costs to the defendant to be taxed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Consented to as to form:
JAMES C. LENNEY,
Attorney for Plaintiff.

12 (Endorsed:) U. S. circuit court, southern district of New York. Edward Pearcy, *versus*, Nevada N. Stranahan, Order sustaining demurrer. Henry L. Burnett, United States attorney, attorney for def't. U. S. circuit court, southern district of New York. Filed Feb. 9, 1904. John A. Shields, clerk.

13 United States Circuit Court for the Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant. } Judgment.

This cause having been regularly brought on for argument before the Honorable E. Henry Lacombe upon the complaint and the demurrer interposed thereto by the defendant, at a stated term of this court, held in and for the southern district of New York in the United States court and post office building, in the borough of Manhattan city of New York, on the 20th day of January 1904, and the said cause having been duly argued by Arthur M. King, assistant U. S. attorney for the defendant in support of the demurrer, and by Charles J. Dodd, Esq., of counsel for the plantiff in opposition to said demurrer, and the said court having on motion of Henry L. Burnett, U. S. attorney, attorney for the defendant made and filed a decree on February 9th, 1904, sustaining the said demurrer and dismissing the complaint herein, with costs, and the said costs of the defendant having been duly taxed by the clerk of this court at the sum of thirteen and 65/100 dollars ($13.65)

Now on motion of Henry L. Burnett, United States attor-
14 ney, attorney for the defendant, it is

Ordered and adjudged that the complaint herein be dismissed, and that the defendant recover of the plaintiff the said sum of thirteen and 65/100 dollars ($13.65) costs and that the defendant have execution therefor.

Judgment signed and filed this 16th day of February, 1904.

JOHN A. SHIELDS, *Clerk.*

Form assented to.

JAMES C. LENNEY,
Attorney for Plaintiff.

(Endorsed:) U. S. circuit court, southern district of New York.—Edward J. Pearcy, *vs.* Nevada N. Stranahan, Judgment.—Henry L. Burnett, United States attorney, attorney for def't.—U. S. circuit court, southern district of New York, Filed Feb. 16, 1904, John A. Shields, clerk.

15 Supreme Court of the United States.

EDWARD J. PEARCY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error. } Assignment of Errors.

Afterwards, to wit, on the 4th day of March, 1904, before the Supreme Court of the United States, at the city of Washington, comes the said plaintiff in error, by James C. Lenney, his attorney, and says, that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears:

I. That the judgment aforesaid in form aforesaid given, was given for the said defendant in error against the said plaintiff in error.

II. That the said judgment was not given for the said plaintiff in error against the said defendant in error, as demanded in the complaint.

III. That the said circuit court of the United States for the southern district of New York held that the facts stated in the complaint herein do not constitute a cause of action.

IV. That in and by its said judgment the said circuit court dismissed the complaint herein, with costs.

And the said plaintiff in error prays that the judgment aforesaid
for the errors aforesaid and other errors in the record and
16 proceedings aforesaid may be reversed, annulled and altogether held for nothing, and that he, the said plaintiff—error, may be restored to all things which he has lost by occasion of said judgment, etc.

JAMES C. LENNEY,
Attorney for Plaintiff in Error,
149 *Broadway, New York City.*

(Endorsed:) Supreme Court of the U. S. Edward J. Pearcy, pl'ff in error, vs. Nevada N. Stranahan, def't in error. Assignment of errors. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. U. S. circuit court, southern district of New York. Filed Mar. 4, 1904. John A. Shields, clerk.

17 In the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

EDWARD J. PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Bond for Damages and Costs.

Know all men by these presents, that we, James A. Hill and John E. Rouse, are held and firmly bound unto the above named Nevada N. Stranahan in the sum of two hundred and fifty dollars ($250.00) to be paid to the said Nevada N. Stranahan, before the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3rd day of March in the year of our Lord, nineteen hundred and four.

Whereas, the above named Edward J. Pearcy and others have sued out a writ of error to the Supreme Court of the United States to reverse the judgment entered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York,

Now, therefore, the condition of this obligation is such that
18 the above named Edward J. Pearcy shall prosecute the said writ to effect and answer all damages and costs; if they fail to make their appeal for the writ good, then this obligation shall be void, otherwise, to remain in full force and virtue.

JAMES A. HILL. [SEAL.]
JOHN E. ROUSE. [SEAL.]

Sealed and delivered and taken and acknowledged this 3rd day of March 1904, before me:

CHAS. J. DODD,
Notary Public, Kings County.

Cert. filed in N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

James A. Hill and John E. Rouse, being duly sworn, do depose and say, and each for himself deposes and says: That he is worth the sum of five hundred dollars ($500.00) over and above all his just debts and liabilities.

JAMES A. HILL.
JOHN E. ROUSE.

Sworn to this 3rd day of March A. D. 1904, before me.

CHAS. J. DODD,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

19 (Endorsed:) In the circuit court of the United States for the southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Bond for damages. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. Approved as to form and also as to sufficiency of sureties with reservation, however to the defendant of the right at any time to examine the proper officers of the surety company, under oath, touching its assets, liabilities and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court, southern district of New York. Filed Mar. 14, 1904. John A. Shields, clerk.

20 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Nevada N. Stranahan, Greeting:

You are hereby cited and admonished to appear before the United States Supreme Court to be holden at the city of Washington, on the 11th day of April, 1904, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Edward J. Pearcy is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done in his behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named this 14 day of March, in the year of our Lord, 1904, and of the Independence of these United States, the one hundred and twenty-eighth.

E. HENRY LACOMBE,
U. S. Circuit Judge.

21 [Endorsed:] E. & A. C. 2128. In the circuit court of the United States for the southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Citation. James C. Lenney, attorney for plaintiff, office and post office address: 149 Broadway, borough of Manhattan, New York city. A copy of the within paper has been this day received at this office Mar. 15 1904 Henry L. Burnett, U. S. attorney. M. U. S. circuit court, southern district, New York. Filed Mar. 15, 1904. John A. Shields, clerk. 50 p'd.

22 [Endorsed:] United States Supreme Court Edward J. Pearcy pl'ff in error, *vs.* Nevada N. Stranahan def't in error. Endorsed on cover: File No. 19,294. S. New York C. C. U. S. Term No. 221. Edward J. Pearcy, plaintiff in error, *vs.* Nevada N. Stranahan. Filed April 8th, 1904. File No. 19,294.